

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALVIN MOZCO RODRIGUEZ,

Petitioner,

vs.

D.W. NEVEN, *et al.*,

Respondents.

2:12-cv-00831-KJD-RJJ

ORDER

Petitioner has submitted an application (#1) to proceed *in forma pauperis* and a habeas petition.

The matter has not been properly commenced because the pauper application does not include the required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner attached neither.

The application therefore will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly-filed new petition being untimely.¹ In this regard,

¹The papers on file and the online docket records of the state courts reflect the following.

On February 25, 2010, Alvin Rodriguez was convicted, pursuant to a guilty plea, of second-degree kidnapping. Petitioner did not appeal, and the time for doing so expired on Monday, March 29, 2010. Less
(continued...)

1 petitioner at all times remains responsible for calculating the running of the federal limitation
2 period as applied to his case, properly commencing a timely-filed federal habeas action, and
3 properly exhausting his claims in the state courts.

4 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*
5 is DENIED and that this action shall be DISMISSED without prejudice to the filing of a new
6 petition in a new action with a properly completed pauper application.

7 IT FURTHER IS ORDERED that all pending motions are DENIED without prejudice.

8 IT FURTHER IS ORDERED that a certificate of appealability is DENIED. Reasonable
9 jurists would not find the dismissal of the improperly-commenced action without prejudice
10 debatable or wrong.

11 The Clerk of Court shall send petitioner two copies each of an application form to
12 proceed *in forma pauperis* for incarcerated persons and a noncapital Section 2254 habeas
13 petition form, one copy of the instructions for each form, and a copy of the papers that he
14 submitted in this action.

15 The Clerk shall enter final judgment accordingly, dismissing this action without
16 prejudice.

17 DATED: May 25, 2012

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19 

20 KENT J. DAWSON
21 United States District Judge

22 ¹(...continued)

23 than four months later, on or about July 16, 2010, petitioner filed a motion to amend the judgment of
24 conviction to receive jail time credits. The Supreme Court of Nevada affirmed the denial of the motion on
25 February 9, 2011. Meanwhile, on or about September 17, 2010, petitioner filed a state post-conviction
26 petition. The Supreme Court of Nevada affirmed the denial of the petition, with the remittitur issuing on
February 7, 2012. Meanwhile, on or about February 3, 2012, petitioner filed a motion for modification of
sentence. His appeal from the denial of the motion remains pending at this time.

27 Accordingly, there have been state court proceedings challenging petitioner's conviction or sentence
28 pending continuously from on or about July 16, 2010, through the present. Even if this Court *arguendo* were
to disregard the state proceedings on all but the state post-conviction petition, petitioner would have sufficient
time left in the federal limitation period to file a properly-commenced and still-timely new federal action